

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CARLOS MARTINEZ,  
  
Petitioner,  
  
v.  
  
KATHLEEN ALLISON,  
  
Respondent.

Case No. 1:23-cv-00323-CDB (HC)

ORDER DIRECTING CLERK OF COURT TO  
CLOSE CASE AND ADJUST THE DOCKET  
TO REFLECT VOLUNTARY DISMISSAL  
PURSUANT TO RULE 41(a)(1)(A)(i) OF THE  
FEDERAL RULES OF CIVIL PROCEDURE

(Doc. 6)

Petitioner Carlos Martinez, a state prisoner currently incarcerated at Valley State Prison in Chowchilla, California, is proceeding pro se with a Petition for writ of habeas corpus under 28 U.S.C. § 2254, filed on February 23, 2023.<sup>1</sup> (Doc. 1). On June 28, 2023, Petitioner filed a “motion to dismiss” his own petition.

The Federal Rules of Civil Procedure may be applied to habeas proceedings to the extent such rules are not inconsistent with the statutory provisions of the Habeas Rules. Rules Governing Section 2254 Cases in the United States District Court, Rule 12. *See also*, Fed R. Civ. P. 81(a)(4). Pursuant to Fed. R. Civ. P. Rule 41(a)(1)(A)(i), “the plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal before the opposing party serves either an

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<sup>1</sup> The Clerk of Court filed the petition on Petitioner’s behalf on March 3, 2023. Petitioner signed the filing on February 23, 2023, the date the Court presumes he delivered it for mailing, and pursuant to the prisoner mailbox rule, that is the effective date of filing. *Houston v. Lack*, 487 U.S. 266, 276 (1988).

1 answer or a motion for summary judgment.” Fed. R. Civ. P. 41(a)(1)(A)(i). Voluntary dismissal  
2 under this rule requires no action on the part of the court. *See United States v. 475 Martin Lane*,  
3 545 F.3d 1134, 1145 (9th Cir. 2008) (voluntary dismissal pursuant to Rule 41(a)(1)(A)(i) is self-  
4 executing and requires no further action by court). Rule 41(a)(1) has been found to divest the  
5 court of jurisdiction upon the filing of any notice of voluntary dismissal. *See Bhanami v. Apker*,  
6 No. 1:17-cv-01572-DAD-JLT (HC), 2018 WL 684896, at \*1 (E.D. Cal. Feb. 1, 2018).

7 In this case, Respondent has not yet answered or filed a motion for summary judgment.  
8 Thus, Petitioner’s notice of dismissal was effective upon its filing and without a court order  
9 pursuant to Federal Rule of Civil 41(a)(1)(A)(i).

10 Accordingly, the Clerk of the Court is HEREBY DIRECTED to CLOSE the file in this  
11 case and adjust the docket to reflect voluntary dismissal of this action pursuant to Rule  
12 41(a)(1)(A)(i).

13 IT IS SO ORDERED.

14 Dated: **June 30, 2023**

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16 UNITED STATES MAGISTRATE JUDGE  
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